

# Order DOT 1010.1A

## Procedures For the One Dot Sharing Neutrals Equal Employment Opportunity/ Equal Opportunity Alternative Dispute Resolution Program

**U.S. Department of Transportation**  
Office of the Secretary of Transportation

**ORDER**  
**DOT 1010.1A**

**PROCEDURES FOR THE  
ONE DOT SHARING NEUTRALS  
EQUAL EMPLOYMENT OPPORTUNITY/  
EQUAL OPPORTUNITY ALTERNATIVE  
DISPUTE RESOLUTION PROGRAM**

DISTRIBUTION: All Secretarial Offices and Operating Administrations

### FOREWORD

This order establishes a mediation program that provides an alternative method for resolving allegations of discrimination raised in the Equal Employment Opportunity/ Equal Opportunity (EEO/EO) process at the Department of Transportation. This program reflects the core principles contained in the Equal Employment Opportunity Commission (EEOC) policy statement on Alternative Dispute Resolution (ADR). Specifically, that it:

- Provides a program that is voluntary, neutral, fair, and confidential by which parties can discuss their dispute;
- Provides a program that is flexible to meet a variety of challenges the agency and offices face;
- Ensures enforceable agreements are reached between the agency and the aggrieved;
- Ensures that the parties' legal rights are preserved;
- Ensures that the parties willingly and voluntarily agree to the resolution of the dispute; and
- Ensures that the program includes training and evaluation components.

Norman Y. Mineta

## CHAPTER 1. GENERAL

**1-1. PURPOSE.** This order establishes and provides for a mediation program to resolve Equal Employment Opportunity/Equal Opportunity (EEO/EO) issues at the Department of Transportation (DOT).

**1-2. SCOPE.** The mediation process, under this program, will address matters covered by Title VII of the Civil Rights Act (discrimination based on race, color, religion, sex, national origin, and reprisal), U.S. Coast Guard Manual, Commandant Instruction M5350.4 (USCG COMDTINST M5350.4), the Age Discrimination in Employment Act (discrimination on the basis of age, when the employee is at least 40 years old), the Rehabilitation Act (discrimination

on the basis of physical or mental disabilities) and the Equal Pay Act (discrimination on the basis of payment of wages based on sex), and complaints of discrimination based on sexual orientation.

**1-3. OBJECTIVE.** The objective of this program is to resolve allegations of workplace discrimination at the earliest possible stage of the EEO/EO process. Early resolution benefits the agency and its employees by creating a more hospitable workplace for all. Other benefits include reduction of time and the significant costs associated with processing EEO/EO complaints.

#### **1-4. BACKGROUND.**

**a. The Civil Rights Act.** The Civil Rights Act of 1991 encourages the use of Alternative Dispute Resolution (ADR) to resolve disputes arising out of discrimination and unlawful harassment in the workplace. The Equal Employment Opportunity Commission (EEOC), in its implementing regulations, provides agencies an additional 60 days in the pre-complaint stage to allow for informal resolution through the use of ADR, if all parties agree. Similarly, if an individual enters into an ADR process after a formal complaint is filed, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved, the complaint must be processed within the extended time period.

**b. The Administrative Dispute Resolution Act.** The Administrative Dispute Resolution Act (ADRA) of 1996 (Public Law 104-320) gives Federal agencies the authority to utilize dispute resolution methods to resolve issues in controversy that relate to an administrative program, if the parties agree to such methods.

**c. Federal Regulation.** On July 12, 1999, the EEOC published a final rule revising Title 29 of the Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity (29 CFR, Part 1614). The final rule requires agencies to establish or make available an ADR program for the EEO process.

**1-5. DEPARTMENT OF TRANSPORTATION POLICY.** The Department of Transportation is committed to using ADR methods to resolve disputes and advance its mission. As an alternative method of resolving EEO/EO disputes, the Department, when determined appropriate, has selected to offer mediation during any stage of the EEO/EO Complaints process. The efficient and effective use of mediation will help resolve discrimination disputes at an early stage, in an expeditious, cost-effective, and mutually acceptable manner. Continuous training opportunities will be provided to mediators, and others, to enhance their understanding of the theory and practice of mediation. In addition, the mediation program will be evaluated to determine whether the program is achieving its goals. The results will be used to make the program more effective.

#### **1-6. DEFINITIONS.**

**a. Agency Official.** The individual who has the authority to grant or deny the requested relief.

**b. Agency Representative.** An individual (e.g., attorney, personnel specialist, or staff assistant) who advises the agency official about laws, regulations, and policies that govern resolution terms.

**c. Aggrieved Person.** An individual who contacts an EEO Counselor in an attempt to informally resolve an issue of workplace discrimination and/or harassment. This individual may also be referred to as Counselee.

**d. ADR.** A range of problem-solving processes used for resolving conflict in lieu of formal and adversarial processes, such as litigation. ADR may be used to resolve a portion or the entire issue in controversy. These processes usually involve the use of a neutral third party who works with the parties in dispute to help them find mutually acceptable solutions. ADR processes include, but are not limited to: negotiation, facilitation, conciliation, mediation, early neutral evaluation, mini-trial, mediation-arbitration, and arbitration. Mediation is the primary process selected for this program.

**e. Civil Rights Director (CRD).** The management official who is responsible for civil rights programs within the DOT Operating Administrations (OAs).

**f. Civil Rights Office (CRO).** The office responsible for providing information and administering the EEO/EO complaints process and the EEO/EO ADR program.

**g. Co-mediation.** Mediation conducted by more than one mediator working together as a team.

**h. Complainant.** An individual who has completed EEO/EO counseling and has filed a formal EEO/EO complaint with the Departmental Office of Civil Rights.

- i. Departmental Office of Civil Rights (DOCR).** The office within DOT authorized to accept, dismiss, or investigate complaints, and issue final agency decisions or final orders on EEO/EO complaints.
- j. Regional Offices of Civil Rights (OCR).** The DOT offices located in the regions, authorized to accept, dismiss or investigate complaints, and issue final agency decisions or final orders on EEO/EO complaints.
- k. Dispute Resolution Specialist (DRS).** The Departmental official responsible for implementing the provisions of the ADRA of 1996. The DRS also serves as the DMC for complaints arising in DOCR.
- l. Designated Official.** The OA's EEO/EO Specialist responsible for case intake, mediator assignments, integrity of the process, and monitoring and evaluating the effectiveness of the ADR program.
- m. Dispute.** The issue(s) raised in the EEO/EO process.
- n. Deputy Dispute Resolution Specialist (DDRS).** The official responsible for implementing the provisions of the ADRA of 1996 within the respective OA or Secretarial Offices.
- o. DOCR Mediation Coordinator (DMC).** The individual responsible for managing the program, coordinating mediation sessions, assigning mediators, ensuring the integrity of the process, and monitoring and evaluating the effectiveness of the ONE DOT Sharing Neutrals Program.
- p. EEO/EO Complaint Process.** The process described in 29 CFR, Part 1614, and USCG COMDTINST M5350.4, for raising allegations of prohibited discrimination.
- q. EEO Counselor.** A neutral individual, who advises aggrieved persons about the EEO/EO complaint process (including an explanation of the mediation process), determines the basis(es) and issue(s) of a potential complaint, conducts a limited inquiry into the allegations, seeks and documents resolution, or advises aggrieved persons of their right to file a formal complaint, and prepares a report on counseling activities. This definition includes the US Coast Guard (USCG) Equal Opportunity Advisor (EOA). The EEO Counselor is not a mediator and does not conduct mediations.
- r. EEO/EO Investigator.** The duly authorized DOCR or contract employee responsible for developing an impartial and appropriate factual record upon which to make findings on the claims raised in the written EEO/EO complaint.
- s. Employee Representative.** An individual who accompanies, advises, and/or represents the employee's interests, (e.g., attorney, another employee, etc.).
- t. Formal EEO/EO Complaint Process.** The process, described in 29 CFR, Part 1614, and USCG COMDTINST M53550.4, that follows the pre-complaint stage when the issues raised in EEO/EO counseling have not been resolved and the aggrieved person wishes to pursue the matter with a formal complaint.
- u. Limited Inquiry.** The collection of information during the initial interview with the aggrieved person for the purpose of determining jurisdictional questions. This includes whether there may be issues relating to the timeliness of the individual's EEO Counselor contact and obtaining information relating to the issue(s). It also includes obtaining enough information concerning the claim(s) and basis (es) to enable the agency to properly identify the legal claim raised, if the individual files a complaint at the conclusion of the EEO/EO counseling process.
- v. Mediation.** Mediation is an alternative dispute resolution process in which a mediator assists open communication between parties to jointly explore and reconcile their differences and to reach a solution acceptable to both parties.
- w. Mediator.** A trained neutral third party. The mediator facilitates open discussion between parties in dispute and assists them with negotiating a mutually agreeable resolution. A mediator has no authority to impose a decision or resolution on the parties.
- x. ONE DOT Sharing Neutrals Program.** The program whereby Secretarial Offices and DOT OAs share a pool of mediators for resolving EEO/EO discrimination complaints. The ONE DOT Sharing Neutrals program is administered by DOCR.
- y. Operating Administration (OA).** The 12 individual operating administrations within DOT. These include the Bureau of Transportation Statistics, the US Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the Federal Transit Administration, the Maritime Administration, the National Highway Traffic Safety Administration, the Research

and Special Programs Administration, the Saint Lawrence Seaway Development Corporation, and the Transportation Administrative Services Center.

**z. Parties.** The participants in the dispute resolution process (i.e., aggrieved person and the agency official).

**aa. Pre-Complaint Process.** The initial problem-solving phase of the EEO/EO complaint process as described in 29 CFR, Part 1614, and COMDTINST M5350.4. This phase includes EEO/EO counseling and, if elected, mediation.

**ab. Resolution Agreement.** A formal written agreement that defines the terms by which the parties in dispute have agreed to resolve a dispute.

**1-7. FORMS AND REPORTS.** Appendix 1, Mediation Program Formats, contains copies of documents used in the DOT mediation process. Reproduction and use of the documents in the appendix are encouraged.

**1-8. RELATED PUBLICATIONS.** Appendix 2, Related Publications, contains additional information on the statutory, regulatory, and administrative authority for this program.

**1-9. REQUEST FOR INFORMATION.** Information on mediation may be obtained from the DOCR, OA Civil Rights Offices, the DOT DRS, or OA DDRSs. Consult the DOT telephone book for office locations and telephone numbers or the ONE DOT Sharing Neutrals Website at <http://www.dotcr.ost.dot.gov/page/alternative-dispute-resolution>.

## CHAPTER 2. PROCEDURES FOR MEDIATION

**2-1. INTRODUCTION.** The first step in initiating the EEO/EO complaint process is for the aggrieved person to contact an EEO Counselor or Civil Rights Office's designated official. In accordance with 29 CFR, Part 1614, and COMDTINST M5350.4, contact with an EEO counselor must be made within 45 calendar days of the alleged act of discrimination, discriminatory harassment, or the effective date of an alleged discriminatory personnel action. During the initial counseling, the Counselor or the designated official will provide the aggrieved person a Notification of Rights Form (Rights, Responsibility, Election Rights Memorandum, a copy of the ONE DOT Sharing Neutrals brochure, and a Request for Mediation Form, (Appendix 1, Format 1), as well as any other internal publications). Mediation is an alternative method of attempting to resolve allegations of discrimination. Mediation may be used at any stage of the EEO/EO process.

### 2-2. REQUEST FOR MEDIATION.

#### a. Mediation Option.

**(1) Pre-complaint Stage.** During the initial discussion with the aggrieved, the EEO Counselor or designated official will inform the aggrieved of his/her rights in the EEO/EO process. This will include a description of how the agency's ADR program works, the opportunity to participate in the program when the agency agrees to offer ADR, and the right to file a formal complaint if ADR does not result in a resolution. The EEO Counselor or the OA's designated official will provide the aggrieved with a Request for Mediation Form (Appendix 1, Format 1). When the agency offers mediation and the aggrieved elects mediation at the pre-complaint stage, the counseling period will be extended by an additional 60 days, but will never exceed 90 days. When mediation does not result in a written resolution, the aggrieved person will be referred back to the EEO Counselor or the designated official, either by the mediator, DMC, or the OA's designated official. The EEO Counselor or designated official will immediately issue the Notice of Right to File a formal EEO/EO complaint.

If the aggrieved person's OA has an established EEO/EO ADR program, the EEO Counselor or designated official will forward the completed Request to Mediate Form and the Mediation Intake Form (Appendix 1, Format 4) to the OA's designated official. The agency will make an assessment of the complaint's appropriateness for mediation. If determined appropriate, the OA's designated official will make the offer to mediate by providing him/her with an Agreement to Mediate Form (Appendix 1, Format 5). The aggrieved person will have five calendar days, from the date of receipt, to consider and elect mediation by signing and returning the form to the OA's designated official. The OA's designated official will coordinate the mediation, unless the aggrieved or the agency requests that the mediation be coordinated outside the OA's internal EEO/EO ADR program. When such a request occurs, the OA's designated official will forward the request to the DMC for coordination.

If the aggrieved person's OA does not have an established EEO/EO ADR program, the OA's designated official will forward the completed Request for Mediation Form and the Mediation Intake Form to the DMC. The agency or the DMC will make an assessment of the complaint's appropriateness for mediation, if determined appropriate, the OA's designated official or the DMC will make the offer to mediate by providing the aggrieved with an Agreement to Mediate Form. The aggrieved person will have five calendar days, from the date of receipt, to consider and elect mediation by signing and returning the form to the OA's designated official or the DMC. Once the form is received, the DMC will coordinate the mediation.

If the aggrieved person is a DOOCR employee, the DOOCR's designated official will forward the Request for Mediation Form and Mediation Intake Form to the DRS, who will serve as the DMC. The agency will make an assessment of the complaint's appropriateness for mediation. If determined appropriate, the DRS will offer mediation to the aggrieved by providing him/her with an Agreement to Mediate Form. The aggrieved person will have five calendar days, from the date of receipt, to consider and elect mediation by signing and returning to the OA's designated official. Once the form is received, the DRS will coordinate the mediation.

**(2) Formal Complaint Stage.** Mediation may be offered anytime during the formal phase of the EEO/EO process through the DOOCR, Regional Civil Rights Office, or OA's Civil Rights Office (CRO). The Regional Office of Civil Rights (OCR) will include a copy of the Request for Mediation Form (Appendix 1, Format 1) with the Accept/Dismiss Letter to the complainant or their representative. The OCR will decide if a complaint is appropriate for mediation; if appropriate, the DMC will be contacted. The OCR may refer a complaint for mediation before receiving a Request for Mediation Form from the complainant or his/her representative. If the DMC concurs with the OCR's recommendations or receives a Request for Mediation Form, the DMC will inform the OA's CRO or the agency official that a request has been made for mediation. The agency will make an assessment of the complaint to determine if mediation will be offered. If the agency offers mediation, the DMC will notify the OCR and provide the complainant with the Agreement to Mediate Form. The complainant may elect mediation by signing and returning the form to the DMC within five days of receipt. A written agreement may extend the processing time for the complaint for not more than 90 days. If the parties do not resolve the dispute through mediation, the complaint must be processed within the extended time, not to exceed 270 days.

NOTE: If the complainant does not grant an extension, the DOOCR Regional Office will continue to actively process the formal complaint even when the matter has been referred to mediation.

**(A)** If mediation is requested through one of the DOOCR regional offices and the complaint is against an OA that has an established EEO/EO ADR program, the complainant will be informed of the OA's internal program, as well as the availability of the ONE DOT Sharing Neutrals Program. The Regional OCR or the DMC will ascertain if the complainant wishes to have his/her complaint mediated by the OA where the complaint originated. If the complainant chooses to have the complaint mediated by the OA, the Regional OCR or the DMC will refer the complainant to the appropriate designated official for coordination. If, however, the complainant elects to have the complaint mediated by the ONE DOT Sharing Neutrals Program, the request should be forwarded to the DMC for coordination.

**(B)** If mediation is requested through one of the DOOCR Regional Offices and the complaint is against an OA that does not have an established EEO/EO ADR program, the request will be referred directly to the DMC. Depending upon whether the request to mediate was made by the complainant or an agency official, the CRD, designated official, or the DMC will contact the other parties to encourage participation in mediation. If costs are associated with the mediation (e.g., travel costs), the DMC will coordinate the administrative details with the appropriate designated official.

**(C)** If mediation is requested through the OA and it does not have an established EEO/EO ADR program, the request will be referred to the DMC to arrange the mediation.

**b. Agreement to Mediate.** Agreement to enter into mediation will be documented on the Agreement to Mediate form (Appendix 1, Format 5) and signed by the aggrieved/complainant and the agency official prior to the mediation

or at the beginning of the first mediation session. Either the aggrieved person/complainant or the management official may request mediation. The Agreement to Mediate form will be signed by all parties (i.e., mediator(s), aggrieved person/complainant, management official, and representatives). If completed prior to the mediation, the form will be forwarded to the appropriate designated official or DMC for action. The Agreement to Mediate form will be considered a request until both of the parties in dispute have signed the document or the request is rescinded. Either of the parties in dispute may decline to participate in mediation. However, managers, supervisors, and agency representatives are urged to give every consideration to participating in mediations where an EEO/EO matter arises in their area of influence and is deemed appropriate for mediation. The EEOC's Management Directive 110 (MD 110) provides that managers have a duty to cooperate in the ADR process once the agency has determined that a matter is appropriate for ADR. (See MD 110, 3-2). If the management official, particularly the Responding Management Official (RMO), declines to participate in the mediation, they should not deter the mediation efforts. In such cases, the agency may designate another official with settlement authority to participate in the mediation. When the Agency declines to offer mediation, the OA's designated official must provide the DMC with the Mediation Option Form (Appendix 1, Format 3).

### **2-3. ADR CASE ASSESSMENT.**

a. Upon receipt of the Request for Mediation Form or the Mediation Option Form, the DMC or the designated official will review the case to determine whether mediation is appropriate.

**(1) ADR Considerations.** A decision to use ADR may be made before or after a dispute arises. Several factors should be considered in making that decision. Some factors may favor the use of ADR, while others may weigh against it. Although not intended as an exhaustive list of factors, the Department has determined that ADR may be helpful in resolving a particular dispute where one or more of the following factors are present:

(A) Identifiable Parties. There is an identifiable group of constituents with interests (the parties) so that all reasonably foreseeable interests can be represented.

(B) Good Faith. The parties are willing to participate in good faith.

(C) Communication. The parties are interested in seeking agreement, but poor communication or personality conflicts between the parties adversely affect negotiations.

(D) Continuing Relationship. A continuing relationship between the parties is important and desirable.

(E) Issues. There are issues that are agreed to be ripe for a negotiated solution.

(F) Unrealistic View of the Issues. The parties' demands or views of the issues are unrealistic. A discussion of the situation with a neutral may increase the parties' understanding and result in more realistic alternatives and options.

(G) Sufficient Areas of Compromise. There are sufficient areas of compromise to make ADR worthwhile.

(H) Expectation of Agreement. The parties expect to agree eventually, most likely before reaching the courtroom or engaging in other adversarial processes.

(I) Timing. There is sufficient time to negotiate and ADR will not unreasonably delay the outcome of the matter in dispute. There is likelihood that the parties will be able to reach agreement within a fixed time. There are no statutory or judicial deadlines that are adversely affected by the process. ADR may result in an earlier resolution of the dispute.

(J) Resources. The parties have adequate resources (budget and people) and are willing to commit them to the process.

### **(2) Factors Suggesting Mediation Is Inappropriate Or May Not Be Productive:**

(A) Precedent. The dispute involves significant legal or policy issues and one of the parties desires a precedent.

(B) Affect on Non-Parties. The dispute significantly affects non-parties and there is a need for uniform treatment. For example, the issue may have a nationwide impact or there may be lawsuits pending on similar issues, and there is no legitimate reason to settle with only one party.

(C) Expectation of Settlement. The case is likely to settle through unassisted negotiations.

(D) Fraud, Waste, Abuse, or Criminal Conduct. There is an indication that either party engaged in fraud, waste, abuse, criminal conduct, or for USCG military personnel, Uniformed Code of Military Justice (UCMJ) violations.

**(3) Excluded Claims.** Claims outside the EEO/EO purview and spin-off complaints will be excluded from the mediation EEO/EO program.

**b. Coordination with the Parties in Dispute.** Once a determination has been made to offer mediation, and the aggrieved/complainant has accepted the agency's offer, the OA's designated official will refer the request for mediation to the DMC. The designated official will give the DMC the name of the person who will serve as the agency official during the mediation session. The agency official must be authorized to enter mediation to achieve a binding resolution for the agency. However, the best benefits may be achieved when the person with direct involvement in the case is also part of the session, even if this person does not have ultimate settlement authority. The DMC will coordinate the mediation session and remind both parties that mediation is voluntary. The agency will provide reasonable accommodation as appropriate. When either party requires reasonable accommodations, the designated official should make the request as noted on the Mediation Intake Form (Appendix 1, Form 4).

**c. Case Referral.** Based on the assessment described in paragraph 2-3a, the matter will either be referred to mediation or returned to the appropriate EEO/EO official (e.g., EEO Counselor, EEO/EO Specialist, EEO/EO Investigator, etc.) to continue in the EEO/EO process in accordance with 29 CFR, Part 1614, and USCG COMDTINST M5350.4.

**d. Representation.** Parties to EEO/EO disputes have the right to be accompanied, represented, and advised by a representative of their choice. If a representative will attend the mediation, parties will notify the mediator(s) in advance. In some circumstances, the represented party may ask the representative to speak on her/his behalf. In others, the representative will remain silent and advise the represented party in private caucuses.

**e. Funding Mediation.** Generally, collateral duty DOT mediator(s) will be assigned at no cost. However, if any travel is required, the OA/Secretarial Office responding to the allegation of discrimination or harassment will be responsible for costs associated with the mediation, to include travel expenses for all parties in dispute. When a collateral duty DOT mediator is not available, the DMC, in coordination with the OA's designated official, determines if the use of an outside mediator is appropriate. Mediation costs may include, but are not limited to, hourly service and/or travel costs for a contract mediator or reimbursement of costs for a Federal mediator (e.g., Federal Mediation and Conciliation Service). For mediations involving DOCR employees, DOT collateral duty mediators will not be used and DOCR will fund the cost for outside mediators.

## **2-4. SELECTION OF MEDIATOR.**

### **a. Selection of Mediators.**

(1) When an OA has an internal ADR program, the OA's designated official will assign a mediator and coordinate the mediation session directly with the mediator(s). In cases where the DMC requests a mediator from the OA, and upon assignment of the mediator(s), by the OA's designated official, the DMC will coordinate the mediation session directly with the mediator(s), the aggrieved person(s) and the OA's designated official where the complaint originated.

(2) When an agency does not have an existing ADR Program, the DMC will review the roster of ONE DOT Sharing Neutrals' mediators and select a potential mediator(s) and will coordinate the mediation session directly with the mediator(s), the aggrieved person(s), and the OA's designated official where the complaint originated. The parties in dispute will not select a specific mediator(s).

**b. Mediator Avoidance of Potential Conflict of Interest.** The DMC will contact the potential mediator to determine if any potential conflict of interests exists. The DMC or the OA's designated official will inform the mediator(s) of the name of the aggrieved person, the name of the agency official, and a summary of the allegation(s). The mediator will have the opportunity to decline if a conflict of interest or the appearance of conflict exists. All DOCR complaints will be mediated by non-DOT sources.

**c. Parties Acceptance of the Potential Mediator.** The parties will be provided the name(s) of the mediator(s) prior to the mediation. If no objections are raised, the DMC or the OA's designated official will notify the mediator(s) that the process may begin. If there are objections, the parties will have the opportunity to request another mediator.

**d. OA Mediation.** If no internal mediator is available or the parties agree to an external mediator, the OA's designated official will contact the DMC to locate a mediator.

## **2-5. THE MEDIATION PROCESS.**

**a. Scheduling the Mediation.** The DMC or the OA's designated official, together with the mediator(s), will coordinate and schedule mediation time(s) and location(s) with the parties. Mediation will be conducted in a neutral location.

**b. Pre-mediation Meeting.** Prior to mediation, the DMC or the OA's designated official will separately advise the aggrieved person and the agency official about the mediation process.

**c. Preparation.** Parties should come to the mediation prepared to discuss the issue(s) in dispute and potential ways of resolving the dispute. When appropriate, the agency's designated official should coordinate settlement option(s) prior to the mediation with the agency's legal counsel, human resources or others to ensure that the resolution options are in accordance with laws, regulations, appropriate collective bargaining agreements, and agency policy, and can be implemented in a reasonable timeframe.

**d. Mediation Session.** The mediator(s) will conduct the mediation. The parties will have an opportunity to describe their perceptions of the dispute without interruption. The mediator(s) may call for separate caucuses with each party. Mediation will continue until resolution is reached or it is clear that no resolution is possible at that time. Either party is free to withdraw from the mediation at any time. If one or both parties determine to withdraw from the mediation, the parties should be encouraged to discuss their decision in the presence of the other party and the mediator(s).

**e. Confidentiality.** In accordance with the provisions of the Administrative Dispute Resolution Act and other applicable Federal laws, participating parties will maintain confidentiality.

**f. Coordination of Resolution Terms.** If the mediation results in a potential settlement, the mediator(s) will draft the terms and conditions agreed upon for review and concurrence. The agency official, through the DMC or the designated official, will accomplish appropriate coordination of the terms of the Resolution Agreement to ensure that they are in accordance with all laws, regulations, appropriate collective bargaining agreements, and agency policy, and can be administratively completed within the agreed upon timeframe. If the resolution terms cannot be implemented as written, the DMC, mediators, or the OA's designated official will coordinate changes with the parties or arrange for another meeting between the parties and the mediator(s). Remedies available to resolve allegations of discrimination will vary depending on the authority governing relief.

**g. Resolution.** If there is an agreement in principle on the terms of a resolution, a Resolution Agreement is prepared by the mediator, using Appendix 1, Format 5. The Resolution Agreement is signed after the coordination described in section 2-5f is accomplished.

(1) If resolution is reached at the informal stage of the EEO/EO complaint process, the Resolution Agreement will be signed in triplicate, one for the aggrieved, one for the agency official, one for the servicing OA's Civil Rights Office, and a copy will be maintained by DOCR. For complaints involving DOCR employees, a copy of the Resolution Agreement will be maintained by the DRS and not in the DOCR.

(2) If resolution is reached at the formal stage of the EEO/EO Complaint process, the Resolution Agreement will be signed in triplicate, one for the complainant, one for the agency official and one for the servicing OA's Civil Rights Office. A copy of the Resolution Agreement will be sent to the servicing DOCR regional office and also a copy will be maintained by the DOCR. For complaints involving DOCR employees, a copy of the Resolution Agreement will be maintained by the DRS and not in the DOCR.

**h. No Resolution.** If there is no successful resolution, the mediator will advise the DMC who will refer the aggrieved person back to the appropriate EEO/EO official (e.g., EEO Counselor, EEO/EO specialist, EEO/EO investigator, etc.) to continue the EEO/EO process in accordance with 29 CFR, Part 1614 and USCG COMDTINST M5350.4. The



EEO/EO complaint process resumes at the point where ADR was elected. The total timeframe for the pre-complaint process shall not exceed 90 calendar days and the total timeframe for the formal complaint process shall not exceed 270 calendar days.

**i. Evaluation.** Upon completion of the mediation, the mediator will encourage the parties to complete an evaluation of the mediation process to be forwarded to the coordinator of the mediation services. However, if the parties prefer not to complete the evaluation at that time, the parties should complete and forward the evaluation at a later time to the coordinator of the mediation services.

## **2-6. POST MEDIATION.**

**a. Execution of the Terms of the Resolution Agreement.** The parties who sign the Resolution Agreement (i.e., the agency, through the agency official, and the aggrieved individual) are responsible for executing its terms. Terms that require action by an office not present at the mediation will be coordinated with that office prior to the resolution agreement being signed by the parties.

**b. Administration of the Resolution Agreement.** The Civil Rights Director, or designated official where the complaint originated, will monitor compliance with resolution agreements reached as a result of mediation. Resolution agreements will be maintained in the servicing OA's Civil Rights Office (for a minimum of one year) and DOCR. If a complaint is resolved at the formal level, through the mediation process, a copy will be forwarded to the appropriate regional DOCR office.

**c. Breach of Resolution Agreements.** If the aggrieved person believes that DOT has failed to comply with the terms of the resolution agreement, he/she shall notify the appropriate regional DOCR office. Notice to the appropriate regional DOCR office must be in writing and submitted within 30 days of the date when the aggrieved person knew, or should have known, of the alleged noncompliance. The aggrieved person may request that the terms of the Resolution Agreement be specifically implemented, or alternatively, that the allegation(s) be reinstated for further action from the point the complaint processing ceased. In the event the aggrieved person alleges noncompliance and chooses to reinstate his/her allegations of discrimination, his/her request for reinstatement restores the status quo, requiring that he/she return in full to the agency any relief that has been provided.

### **d. Appellate Rights.**

**(1) For DOT civilian employees only.** If the agency has not responded to the complainant, or if the aggrieved person is not satisfied with the agency's attempt to resolve the matter, he/she may appeal to the EEOC, Office of Federal Operations, for a determination as to whether the agency has complied with the terms of the Resolution Agreement. The aggrieved person may file such an appeal 35 days after he/she has served the agency with the allegations of noncompliance, but must file an appeal within 30 days of his/her receipt of an agency's determination. The aggrieved person must serve a copy of the appeal on the agency and the agency may submit a response to the EEOC within 30 days of receiving notice of the appeal.

**(2) For USCG military personnel only.** If the agency has not responded to the complainant, or if the aggrieved person is not satisfied with the agency's attempt to resolve the matter, he or she may bring the matter to the attention of the Chief, Compliance Operations Division, for a determination as to whether the agency has complied with the terms of the Resolution Agreement. The aggrieved person may file such a request within 30 days of his/her receipt of an agency's determination. The aggrieved person must serve a copy of the appeal on the agency and the agency may submit a response to the Chief, Compliance Operations Division, within 30 days of receiving notice of the appeal.

**(3) For USCG Deployed Military Personnel only.** If the agency has not responded to the complainant, or if the aggrieved person is not satisfied with the agency's attempt to resolve the matter, he or she may bring the matter to the attention of the Chief, Compliance Operations Division, for a determination as to whether the agency has complied with the terms of the Resolution Agreement. The aggrieved person may file such a request within 60 days of his/her receipt of an agency's determination. The aggrieved person must serve a copy of the appeal on the agency and the agency may submit a response to the Chief, Compliance Operations Division, within 60 days of receiving notice of the appeal.

**2-7. REPORTING REQUIREMENTS.** Operating Administrations that have internal EEO/EO ADR Programs are required to complete Equal Employment Opportunity Commission Form 462 (available upon request) and submit it to the Departmental Office of Civil Rights, Internal Policy, Program Development and support Division, Nassif Building, room 5414A, by the 15<sup>th</sup> of each month.

## **CHAPTER 3. DEPARTMENT OF TRANSPORTATION EEO/EO MEDIATORS**

**3-1. MEDIATORS.** The Department and the OAs' Civil Rights Offices may have their own cadre of collateral-duty or full-time EEO/EO mediators.

**3-2. RECRUITMENT OF MEDIATORS.** Each OA may be requested to nominate individuals to participate in the program. The DMC may select from among individuals nominated to serve as mediators.

**3-3. MEDIATOR SKILLS AND ABILITIES.**

a. DOT EEO/EO mediators must possess the following skills and abilities<sup>[1]</sup>:

(1) Gathering information. Effectiveness in identifying and seeking out information **relevant** to the **parties**.

(2) Empathy. Conspicuous awareness and consideration of the needs of others.

(3) Impartiality. Maintaining equal respect for all parties, remaining neutral, and keeping an open mind.

(4) Generating options. Pursuit of collaborative solutions, and generation of ideas and proposals consistent with case facts and workable for opposing parties.

(5) Generating agreements. Effectiveness in moving the parties toward finality and in "closing" an agreement.

(6) Managing the interaction. Effectiveness in developing strategy, managing the process, coping with conflicts between parties and representatives.

**3-4. MEDIATOR STANDARDS OF CONDUCT.** Mediators will adhere to the Model Standards of Conduct for Mediators (Appendix 4) jointly published by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

**3-5. FUNDING MEDIATOR TRAINING.** Each OA will be responsible for funding mediation training. The training of mediators may be conducted by internal DOT qualified ADR trainers or an external organization. The DMC or OA's designated official will notify the Office of the Secretary's Dispute Resolution Specialist of all EEO/EO ADR planned or scheduled training.

**3-6. BASIC AND ADVANCED TRAINING REQUIREMENTS.**

a. **Classroom Training.** DOT EEO/EO mediators will be required to successfully complete 40 hours of formal classroom training to acquire basic mediation skills. The DMC, or the appropriate Operating Administration's designated official, may identify the appropriate training sources. The Dispute Resolution Council shall be notified of all EEO/EO ADR scheduled training. The training shall, at a minimum, consist of:

(1) Basic Skills. Instruction in basic mediation skills, consisting of 24 hours of mediation process, mediator roles, conflict theory, resolution theory, mediator ethics, and role-playing exercises.

(2) Role Play. Participating in role-play sessions simulating mediation scenarios.

(3) Observation. Observation of at least 1 complete mediation conducted by a senior mediator or observation of a mock mediation conducted by an experienced mediator/trainer.

(4) EEO/EO Training for Mediators (Federal sector EEO process - 4 hours). Mediators must be familiar with the entire EEO process pursuant to 29 C.F.R., Part 1614, including time frames; the Civil Service Reform Act and the

statutes that EEOC enforces (including Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act of 1967, as amended, and the Equal Pay Act of 1963, as amended); the theories of discrimination (e.g. disparate treatment, adverse impact, harassment and reasonable accommodation); and Remedies, including compensatory damages, costs and attorney's fees.

(5) Disability Awareness Training (As recommended by EEOC).

**b. On-the-Job Training.** DOT EEO/EO mediators will participate in at least three supervised co-mediations of EEO/EO cases. By the third co-mediation, the developmental mediator should conduct as much of the mediation as possible under the supervision of a senior mediator.

**c. Advanced Training.** After a mediator successfully completes the above listed requirements, mediators will be required to take a series of advanced mediation courses to enhance their proficiency and skills in conflict resolution.

**3-7. MEDIATOR FULL-PERFORMANCE-LEVEL.** Developmental mediators will be required to co-mediate with a senior mediator before mediating on their own. Eligibility to mediate EEO/EO cases individually will be determined by DOCR or the OA CRD, in accordance with any applicable Departmental and Agency directives.

**3-8. CURRENCY TRAINING.** To maintain their skill, mediators will be required to take an annual mediation course, which includes role-playing exercises. The DMC will periodically review mediator performance. Additional training may be recommended to improve performance.

**3-9. ORGANIZATIONAL CONFLICT OF INTEREST.** To avoid the appearance of an organizational conflict of interest, DOT Civil Rights Directors and their staffs will not mediate or co-mediate cases within their jurisdiction.

When EEO Counselors and EEO/EO investigators are used as neutrals, neither the Counselor nor the Investigator shall serve as a neutral in the same matter in which he/she has served as the Counselor or Investigator.

**3-10. ROSTER OF ELIGIBLE MEDIATORS.** The DMC will maintain a roster of ONE DOT Sharing Neutrals' eligible mediators who are appropriately trained and possess the skills necessary to conduct mediations.

**3-11. REMOVAL.** A DOT or non-DOT mediator found to have engaged in conduct that reflects adversely on his/her impartiality, or on the performance of his/her duties as a mediator, may not be permitted to participate as a mediator in the ONE DOT Sharing Neutrals Program. This determination will be made by DOCR or the OA's CRD in accordance with the Model Standards of Conduct for Mediators (Appendix 4) and any applicable Departmental and Agency directives.

**3-12. DISABILITY AWARENESS TRAINING.** All EEO/EO ADR program staff shall receive disability awareness training as recommended by EEOC.

**3-13. ADR TRAINING FOR MANAGERS, SUPERVISORS AND EMPLOYEES.** In accordance with EEOC's MD 110, agencies are required to provide ADR training to managers, supervisors and employees. Each OA will be responsible for providing such training in accordance with EEOC's regulation. However, upon request, the DOCR DMC will provide assistance with developing and/or presenting the training. In any event, OAs will notify the DMC and DRS of planned training, including training outline, targeted audience, date and time, and training source.

## CHAPTER 4. OTHER MEDIATORS

**4-1. FEDERAL EXECUTIVE BOARD PROGRAMS.** In 1961, President Kennedy established the Federal Executive Boards (FEB) to increase the effectiveness and economy of Federal agencies located outside Washington, D.C. The 28 current FEBs have a number of initiatives in place to meet those goals, including ADR programs. DOT regional offices are encouraged to join with other local Federal agencies to participate in FEB mediation programs. These programs share mediators among Federal agencies in close proximity to one another.

**4-2. SHARED AGENCY NEUTRALS.** In Washington, D.C., the equivalent of a FEB mediation program is the Federal Interagency Sharing of Neutrals Project, administered by the Department of Health and Human Services. Washington D.C. Headquarters offices may participate in the Sharing Agency Neutrals Program by contacting the DMC.

**4-3. CONTRACTOR MEDIATORS.** A number of companies provide mediation services for a fee. To the extent that no DOT or other government mediators are available, or where the DMC, OA Sharing Neutrals Coordinator, or CRD's designated representative determines it to be otherwise appropriate, contractor mediators may be used to conduct mediations. Funding for non-government mediations will be coordinated in advance with the office where the complaint originated.

**4-4. NON-DOT MEDIATOR QUALIFICATIONS.** For non-DOT mediators to mediate DOT EEO/EO cases, they must be certified in accordance with the standards established by the state where they practice or meet the requirements as outlined in Chapter 3-6.

**4-5. STANDARDS OF CONDUCT.** Non-DOT mediators shall adhere to the Model Standards of Conduct for Mediators (Appendix 4) jointly published by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

## Appendix 1

### Mediation Program Formats Appendix 1, Format 1

U.S. Department of Transportation  
Equal Employment Opportunity/Equal Opportunity  
Alternative Dispute Resolution  
REQUEST FOR MEDIATION

I request that my complaint be considered for mediation. I understand that the agency is not offering mediation, and that I may not elect mediation until such an offer is made. I further understand that the agency will consider my request, and make an assessment of the complaint's appropriateness for mediation. If the agency offers mediation, at that time, I will have five calendar days to make an election to participate in the mediation process. If however, I choose not to elect mediation, I may continue processing my EEO/EO Complaint in accordance with 29 CFR, Part 1614. and/or U.S. Coast Guard Manual, Commandant Instruction M5350.4

\_\_\_\_\_  
Aggrieved/Complainant

\_\_\_\_\_  
Date

This request will be forwarded to the Operating Administration's EEO/EO Designated Official or the Departmental Mediation Coordinator (DMC).

### Appendix 1, Format 2

Memorandum

U.S. Department of Transportation  
Office of the Secretary of Transportation

---

**ACTION:** Proposed Mediation with

\_\_\_\_\_  
(Complainant's Name)

Date:

From: Departmental Office of Civil Rights  
or Appropriate Civil Rights Office

Reply to  
Attn of:

To:

In an effort to resolve Equal Employment Opportunity/Equal Opportunity (EEO/EO) complaints in an informal, less adversarial, and more expeditious manner, the Equal Employment Opportunity Commission (EEOC) requires agencies to make Alternative Dispute Resolution available to employees. The Department has established a Mediation Program to encourage parties who have a dispute to try to resolve it through mediation. Mediation provides an opportunity for the individuals to discuss their issues directly with each other and explore whether their issues can be resolved in a way that is mutually satisfactory.

On \_\_\_\_\_ Mr./Ms. \_\_\_\_\_ elected mediation in an attempt to resolve an EEO/EO complaint with your office. This memo serves to request your participation in mediation. As participation is voluntary, you have the right to choose not to enter mediation, in which case the complainant may choose to continue in the EEO/EO process. I believe it is advantageous to attempt mediation now, at the early stage, before positions harden and before large expenditures of time and money have occurred.

Many EEO/EO complaints are based on miscommunication between the parties. Mediation offers the opportunity to communicate directly and listen to each other's real concerns. Experience has shown that many of the EEO/EO complaints submitted for mediation are resolved. Even when a case is not resolved, mediation may be helpful in clarifying issues.

The mediators are not advocates for either party or render any decisions. They will facilitate communication between both parties, help each side gain a clearer perspective of their situation, and assist both parties in developing mutually satisfactory options for resolving the issues. If the parties reach an agreement, it will be binding. If they do not reach an agreement, the complainant may continue in the EEO/EO process. EEOC is encouraging mediation in many of the cases before it, so you may be required to participate in mediation at a later date.

When deciding whether to elect mediation, you should consider the following:

- Whatever you tell the mediator is confidential. The mediator does not keep any permanent record of your meetings and will not disclose any confidential information you provide during the mediation unless the parties agree, the information is public, law requires the disclosure, or a court determines that the disclosure of the information is necessary.
- Mediation is meant to avoid delay. Normally, mediation will succeed or end within one or two sessions.
- If you desire, you may bring someone to assist you with mediation.
- If a resolution is achieved, it will be put into a settlement agreement and signed by all relevant parties. That agreement will be binding on all parties.

The initial mediation session will generally last about four hours and usually can be promptly arranged. To indicate whether you choose to participate, please complete the enclosed election form and return it to

\_\_\_\_\_ or by fax at ( ) \_\_\_\_\_, within five calendar days of your receipt of this letter. My office will contact you to schedule the mediation.

Should you have any questions concerning the process or your role at the mediation, please contact ( ) \_\_\_\_\_. If you need additional information about the facts of this case or the EEO/EO process, please call ( ) \_\_\_\_\_.

I hope you will take advantage of this opportunity to try to resolve this dispute in a way that is faster, less formal and that allows both parties to work together to reach an agreement.

cc:

## Appendix 1, Format 3

### MEDIATION OPTION FORM

(Management Official Only)

Please use this form to indicate whether you are willing to participate in mediation. If you agree to participate, the ADR Program Manager will contact you to schedule the mediation. At that time, you will be given information about preparing for the mediation. In order to save time, please list below the days and times during the next three (3) weeks when you are available for at least 4 hours.

I, \_\_\_\_\_, *(Please Print)*

( ) AGREE

( ) DO NOT AGREE \*

to participate in mediation regarding the EEO/EO complaint of \_\_\_\_\_. I understand that the decision to participate in mediation is voluntary and that the process is confidential.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Agency (OA)

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

I am available for mediation at the following dates and times in the next 3 weeks.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* If you have elected NOT to participate in mediation, please indicate the reason(s) why:

a. The dispute involves significant legal or policy issues possibly requiring legal precedent.

b. The dispute significantly affects non-parties and there is a need for uniform treatment (e.g., the issue may have a wide impact, or similar suits are pending and there is no legitimate reason to settle with only one party.)

- c. The case is likely to settle through unassisted negotiations.
- d. There is an indication that either party engaged in fraud, waste, abuse, criminal conduct, or for USCG personnel, UCMJ violations.
- e. Inadequate knowledge of the mediation process.
- f. Role of mediator and qualifications.
- g. Concerns about confidentiality.
- h. Insufficient personnel/other resources to accommodate mediation process (specify).
- i. Other (specify)

Specify: \_\_\_\_\_

## Appendix 1, Format 4

U.S. Department of Transportation  
 Departmental Office of Civil Rights

ONE DOT Sharing Neutrals Program  
 Mediation Intake Form

FAX TO: (202) 366-7717

Date of Request: \_\_\_\_\_

Requesting Operating Administration: \_\_\_\_\_

Name of Agency POC: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

The following individual(s) request a mediation session in an attempt to resolve a dispute.

Name of Aggrieved: \_\_\_\_\_ Position Title & Grade: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: W-\_\_\_\_\_ H-\_\_\_\_\_

Location of Employment: \_\_\_\_\_

Best Time to Contact Requesting Party: \_\_\_\_\_

Complaint is Informal \_\_\_\_\_ or Formal \_\_\_\_\_

Date EEO Counselor Contacted: \_\_\_\_\_ Date Formal Complaint Filed: \_\_\_\_\_

\*Does the Party have other EEO/EO Complaints filed at the informal or formal stage of the EEO/EO Complaints process. Yes \_\_\_\_\_ No \_\_\_\_\_

-----

Name of Responding Party: \_\_\_\_\_ Position Title & Grade: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone: W-\_\_\_\_\_ H-\_\_\_\_\_

Best Time to Contact Responding Party: \_\_\_\_\_

Basis: \_\_\_\_\_

Issue: \_\_\_\_\_

(please use additional sheets, as necessary)

Nature of Dispute:

Date Contacted: Aggrieved \_\_\_\_\_ Respondent \_\_\_\_\_ Confirmed Date: \_\_\_\_\_

Date Contacted: Mediator \_\_\_\_\_ Date Assigned \_\_\_\_\_ Telephone # ( ) \_\_\_\_\_

Date Mediation Scheduled: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

Reasonable Accommodations: \_\_\_\_\_ No \_\_\_\_\_ Yes (Describe)

## Appendix 1, Format 5

**DEPARTMENT OF TRANSPORTATION  
EQUAL EMPLOYMENT OPPORTUNITY/EQUAL OPPORTUNITY  
ALTERNATIVE DISPUTE RESOLUTION**

**CONFIDENTIALITY PROVISIONS  
PLAIN ENGLISH SUMMARY**

## Appendix 1, Format 6

### Resolution Agreement

- This agreement is entered into between (Agency Name) and (Counselee/Complainant) to resolve the following dispute(s): EEO/EO Complaint No. \_\_\_\_\_ or the matter(s)
1. raised with the EEO Counselor on (date), as specified in this paragraph.  
(Counselee/Complainant) alleged that he/she was discriminated against when:



- a.
- b.
- c.

The Agency shall:

- a.
- b.
- c.

2.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

Counselee/Complainant shall:

- a.
- b.
- c.

3.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

4. (Counselee/Complainant) agrees that by signing this Settlement Agreement, his/her allegation(s) set forth in paragraph 1 above are withdrawn. [If there are allegation(s) not withdrawn, list them here, e.g. , “The Parties have not reached an agreement on the following allegation(s) set forth in paragraph 1 and they are not withdrawn:]

5. (Counselee/Complainant) agrees not to initiate a complaint(s), grievance(s), civil lawsuit(s) or claim(s) of any type with regard to the allegation(s) resolved in this agreement.

6. (Counselee/Complainant) affirms that he/she is entering into this Agreement freely, with full knowledge and understanding of its terms and conditions, and without any coercion or duress on the part of the Agency, its officers, representatives, or employees.

7. The Parties agree not to disclose this Settlement Agreement or any matters discussed during mediation, except to those who have a need to know in an official capacity.

8. The Parties agree that the terms and conditions set forth in this Settlement Agreement forms the complete and final basis for settlement.

9. This Settlement Agreement does not constitute an admission of discrimination, reprisal or wrongdoing on the part of the Agency, its officials, representatives, or employees. Rather, this

Settlement Agreement reflects the Parties' interest in resolving the allegation(s) identified above.

10. This Settlement Agreement does not establish any precedent and may not be cited in any other proceeding, except a proceeding addressing the enforcement of this Agreement.

In accordance with 29 C.F.R., Part 1614.504, if the (Counselee/Complainant) believes that the Agency has failed to comply with the terms of the Settlement Agreement, he/she shall timely notify, in writing:

11. Department of Transportation  
Director, Departmental Office of Civil Rights  
Attn: Compliance Operations Division (S-34)  
400-7th Street, S.W.  
Washington, D.C. 20590

(Counselee/Complainant)

(Agency Representative)

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**NOTE:**

- IF SETTLEMENT CONTEMPLATES PAYMENT OF FUNDS OR IMPACTS ON EMPLOYEE BENEFITS, CONSULT WITH AGENCY COUNSEL.**
1. **ON EMPLOYEE BENEFITS, CONSULT WITH AGENCY COUNSEL.**

- DOCR MUST CHECK ITS RECORDS TO ASCERTAIN WHETHER THE COUNSELEE/COMPLAINANT HAS ANY FORMAL EEO/EO COMPLAINTS PENDING AND, IF SO, CONTACT THE APPROPRIATE AGENCY COUNSEL'S OFFICE BEFORE BEGINNING MEDIATION.**
2. **PENDING AND, IF SO, CONTACT THE APPROPRIATE AGENCY COUNSEL'S OFFICE BEFORE BEGINNING MEDIATION.**

RESOLUTION AGREEMENT

FOR MATTERS RAISING ALLEGATIONS OF DISCRIMINATION UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

This agreement is voluntarily entered into between (Agency Name) and (Counselee/Complainant) to resolve the following dispute(s): EEO/EO Complaint No. \_\_\_\_\_ or the matter(s) raised with the EEO Counselor on (date), as specified in this paragraph.

1. (Counselee/Complainant) alleged that he/she was discriminated against when:
  - a.
  - b.

c.

The Agency shall:

a.

2.

b.

c.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

(Counselee/Complainant) shall:

a.

3.

b.

c.

[Insert any agreements/promises of action, including the time by which the action is to be taken.]

4.

(Counselee/Complainant) agrees that by signing this Settlement Agreement, his/her allegation(s) set forth in paragraph 1 above are withdrawn. [If there are allegation(s) not withdrawn, list them here, e.g., "The Parties have not reached an agreement on the following allegation(s) set forth in paragraph 1 and they are not withdrawn:"]

5.

(Counselee/Complainant) agrees not to initiate a complaint(s), grievance(s), civil lawsuit(s) or claim(s) of any type with regard to the allegation(s) resolved in this agreement.

6.

(Counselee/Complainant) affirms that he/she is entering into this Agreement freely, with full knowledge and understanding of its terms and conditions, and without any coercion or duress on the part of the Agency, its officers, representatives, or employees.

7.

The Parties agree not to disclose this Settlement Agreement or any matters discussed during mediation, except to those who have a need to know in an official capacity.

8.

The Parties agree that the terms and conditions set forth in this Settlement Agreement form the complete and final basis for settlement.

9.

This Settlement Agreement does not constitute an admission of discrimination, reprisal or wrongdoing on the part of the Agency, its officials, representatives, or employees. Rather, this Settlement Agreement reflects the Parties' interest in resolving the allegation(s) identified above.

10. This Settlement Agreement does not establish any precedent and may not be cited in any other proceeding, except a proceeding addressing the enforcement of this Agreement.

In accordance with 29 C.F.R. Part 1614.504, if the (Counselee/Complainant) believes that the Agency has failed to comply with the terms of the Settlement Agreement, he/she shall timely notify, in writing:

11. Department of Transportation  
Director, Departmental Office of Civil Rights  
Attn: Compliance Operations Division (S-34)  
400-7th Street, S.W.  
Washington, D.C. 20590

**NOTE: FOR AGE DISCRIMINATION COMPLAINTS, STATUTE AND REGULATIONS REQUIRE THAT THE FOLLOWING CLAUSES BE INCLUDED IN THE SETTLEMENT AGREEMENT:**

12. By signing this Agreement (Counselee/Complainant) understands that he/she is waiving any and all existing rights and claims he/she has raised under the Age Discrimination in Employment Act (ADEA), as amended, 29 U.S.C. §§621-634, and section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, but is not waiving any future rights or claims under the ADEA or Title VII of Civil Rights Act for actions arising after the date he/she signs this Agreement.

13. The (Counselee/Complainant) is aware of his/her right to representation by an attorney and is advised to have an attorney review the Settlement Agreement before signing it.

14. The (Counselee/Complainant) agrees that he/she has been afforded ample opportunity to consult with an attorney concerning the terms and conditions of this Agreement.

15. The (Counselee/Complainant) acknowledges having been given a reasonable amount of time to review the terms and conditions of this Settlement Agreement before signing it.

16. (Counselee/Complainant) has seven (7) days following the signing of this Settlement Agreement within which to revoke the Agreement by written rescission addressed to the counsel for the agency or the EEO/EO ADR Program Manager. This Settlement Agreement shall not become effective or enforceable until the revocation period has expired.

(Counselee/Complainant)

(Agency Representative)

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**NOTE:**

1. **IF SETTLEMENT CONTEMPLATES PAYMENT OF FUNDS OR**

IMPACTS ON EMPLOYEE BENEFITS, CONSULT WITH AGENCY COUNSEL.

2. DOCR MUST CHECK ITS RECORDS TO ASCERTAIN WHETHER THE COUNSELEE/COMPLAINANT HAS ANY FORMAL EEO/EO COMPLAINTS PENDING AND, IF SO, CONTACT THE APPROPRIATE AGENCY COUNSEL'S OFFICE BEFORE BEGINNING MEDIATION. EXIT SURVEY FOR MEDIATION PARTICIPANTS

## Appendix 1, Format 7

Name of Operating Administration: \_\_\_\_\_

Session location: \_\_\_\_\_

Mediator(s) Name: \_\_\_\_\_

PLEASE HELP US EVALUATE THIS PROGRAM BY ANSWERING THE FOLLOWING QUESTIONS ABOUT YOUR EXPERIENCE IN MEDIATION:

Circle the number that best answers each question. If the question does not apply, do not circle anything.

**1. What was your role in the case?**

- (a) Complainant
- (b) Supervisor (respondent)
- (c) Representative for complainant
- (d) Representative for management (respondent)

**2. What is your grade level?** \_\_\_\_\_

**3. If you had a representative in the mediation, was your representative a...**

- (a) Fellow Employee
- (b) Attorney
- (c) Union Representative
- (d) Other please specify \_\_\_\_\_
- (e) Did not have representative

**4. What was the basis of the EEO/EO complaint in this case?**

Circle all that apply.

- |                        |                          |
|------------------------|--------------------------|
| (1) Race               | (6) Disability           |
| (2) Color              | (7) Religion             |
| (3) National origin    | (8) Age                  |
| (4) Sex                | (9) Retaliation/reprisal |
| (5) Sexual orientation |                          |

5. On what date did the dispute begin? \_\_\_\_\_

**6. Please circle or describe the cause of the action of the dispute.**

- (a) Promotion
- (b) Non-selection
- (c) Performance Rating
- (d) Disciplinary Action
- (e) Sexual Harassment
- (f) Other (please describe): \_\_\_\_\_

7. Please describe the relief requested in the dispute prior to mediation

\_\_\_\_\_

\_\_\_\_\_

**Please answer the following questions about your last mediation session:**

**8. How long was this mediation session?**

\_\_\_\_\_ (number of hours)

**9. During the mediation, did you learn about the other party's view?**

- (a) Yes
- (b) No

**10. During the mediation session, did the other party learn about your view?**

- (a) Yes
- (b) No

**11. Did the mediation result in a settlement?**

- (a) Yes – **Skip to question 13**
- (b) No
- (c) Partially

**12. If the mediation failed to result in a settlement or resulted in a partial settlement, were there positive outcomes (such as, a better understanding of the issue or a better communications between the parties) that made it worthwhile?**

- (a) Yes
- (b) No

If yes specify: \_\_\_\_\_

\_\_\_\_\_

**13. Thinking about your most recent mediation session, please assess the mediator's performance in the following areas as poor, fair, good, or excellent.**

The mediator.....	Poor	Fair	Good	Excellent
a. inquired into facts of the complaint impartially	1	2	3	4
b. understood issue(s) of the complaint	1	2	3	4
c. assisted the parties with generating realistic options	1	2	3	4

d. clarified the issue(s) of the complaint	1	2	3	4
e. gained the confidence and trust of the parties	1	2	3	4
f. handled emotional issues satisfactorily	1	2	3	4
g. maintained effective manner (calm, sensitive, empathic, flexible, purposeful)	1	2	3	4
h. inspired confidence in the mediation process	1	2	3	4
i. honored confidentiality	1	2	3	4

**14. Thinking about your experience with mediation overall, please indicate if you strongly agree, somewhat agree, neither agree or disagree, somewhat disagree or strongly disagree with the following statements:**

(Circle one on each line)

**Strongly Agree**

**Somewhat Agree**

**Neither**

**Somewhat Disagree**

**Strongly Disagree**

a. You received sufficient information about mediation	1	2	3	4	5
<b>b. You were comfortable with the session environment</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
c. The mediation was fair	1	2	3	4	5
<b>d. Your level of participation in the mediation was sufficient</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
e. Your views were addressed satisfactorily	1	2	3	4	5
<b>f. The mediator helped clarify our goals</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>

**15. Have you ever been through the EEO/EO COMPLAINT PROCESS before?**

(a) Yes

(b) No – **Skip to question 20**

**16. How many times have you been through the EEO/EO COMPLAINT PROCESS?**

---

**17. Please circle the highest level of any of your prior complaints:**

- (a) Pre-complaint (Informal/Counseling)
- (b) Formal Complaint
- (c) EEO Hearing/Final Agency Decision
- (d) Court Decision

**18. Did mediation take much less, less, the same, more, or much more time than the usual EEO/EO process? How did time in mediation relate to time in EEO/EO process?**

**Mediation took:**

- (a) much less time
- (b) less time
- (c) the same amount of time
- (d) more time
- (e) much more time

**19. Did the process save you resources when compared to pursuing the complaint through the conventional process?**

- (a) Yes
- (b) No

**20. Have you ever been through the ONE DOT mediation process before?**

- (a) Yes
- (b) No

**If yes, how many times?** \_\_\_\_\_

**21. Would you participate in mediation again?**

- (a) Yes
- (b) No

**22. Do you have additional comments or suggestions to improve the Program?**

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## Appendix 2

### RELATED PUBLICATIONS

#### 1. STATUTES.

- (a) The Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex (gender), national origin, or reprisal.
- (b) The Age Discrimination in Employment Act of 1967 prohibits discrimination in employment based on age when the employee is at least 40 years old.
- (c) The Equal Pay Act prohibits discrimination in payment of wages based on sex (gender).
- (d) The Rehabilitation Act of 1973 prohibits discrimination in employment on the basis of physical or mental handicap.
- (e) The Administrative Dispute Resolution Act of 1996 (Public Law 104-320) reauthorizes Federal agencies to utilize dispute resolution to resolve an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.
- (f) Title 5 of the United States Code, Chapter 5, Subchapter IV, Alternative Means of Dispute Resolution in the Administrative Process, as amended, (see appendix 3).



(g) 49 U.S.C. 102, Department of Transportation, (Presidential Appointees).

## **2. REGULATIONS.**

(a) 29 Code of Federal Regulations (CFR) Part 1614, Federal Sector Equal Employment Opportunity governs processing complaints of Federal employment discrimination.

(b) 49 CFR 1.23(a), Subtitle A, Office of the Secretary of Transportation Spheres of Primary Responsibility for the overall planning, direction and control of departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in departmental programs, etc.

(c) 65 Federal Register 83085, December 29, 2000, Confidentiality in Federal ADR Programs.

## **3. EXECUTIVE ORDERS.**

Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended, prohibits discrimination in federal employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation.

## **4. MANAGEMENT DIRECTIVES.**

Equal Employment Opportunity Commission Equal Employment Opportunity Management Directive (MD) 110, Federal Sector Complaints Processing Manual provides guidance on processing complaints of Federal employment discrimination.

# **Appendix 3**

## **TITLE 5, U.S.C., CHAPTER 5, SUBCHAPTER IV, ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS**

### §571. Definitions

For the purpose of this subchapter, the term-

- (1) "agency" has the same meaning as in section 551(1) of this title;
- (2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule-making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;
- (3) "alternative means of dispute resolution" means any procedure that is used to resolve issues of controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombuds, or any combination thereof;
- (4) "award" means any decision by an arbitrator resolving the issues in controversy;
- (5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;
- (6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) "in confidence" means, with respect to information, that is provided-

- a. with the expressed intent of the source that is not to be disclosed; or
- b. under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement-

- a. between an agency and persons who would be substantially affected by the decision; or
- b. between persons who would be substantially affected by the decision;

(9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) "party" means-

- a. for a proceeding with named parties, the same as in section 551 (3) of this title; and
- b. for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) "person" has the same meaning as in section 551-(2) of this title; and

(12) "roster" means a list of persons qualified to provide services as neutrals.

#### § 572. General Authority

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if-

(1) a definitive or authoritative resolution of the matter is required for precedential the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(2) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(3) the matter significantly affects persons or organizations who are not parties to the proceedings;

(4) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(5) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures, which supplement rather than limit other available agency dispute resolution techniques.

#### § 573. Neutrals

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or a mediator serves at the will of the parties.

(c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution, shall-

(1) encourage and facilitate agency use of alternative means of dispute resolution; and

(2) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

#### § 574. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless-

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to-

a. prevent a manifest injustice;

b. help establish a violation of law; or

c. prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity

of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication unless-

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to-

a. prevent a manifest injustice;

b. help establish a violation of law; or

c. prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communication will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution communication or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement, the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(1) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such a proceeding so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

## Appendix 4

### Model Standards of Conduct For Mediators [2]

**Introductory Note.** The initiative for these standards came from three professional groups: The American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution. The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it — a beginning, not an end. The model standards are intended to apply to all types of mediation. It is recognized, however, that in some cases, the application of these standards may be affected by laws or contractual agreements.

**Preface.** The model standards of conduct for mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.

#### **I. Self-Determination: A Mediator shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.**

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

#### **COMMENTS:**

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

#### **II. Impartiality: A Mediator shall Conduct the Mediation in an Impartial Manner.**

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

#### **COMMENTS:**

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

**III. Conflicts of Interest: A Mediator shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator shall Decline to Mediate unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest also Governs Conduct that Occurs During and After the Mediation.**

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances, which would raise legitimate questions about the integrity of the mediation process.

**COMMENTS:**

- A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.
- Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

**IV. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.**

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

**COMMENTS:**

- Mediators should have information available for the parties regarding their relevant training, education and experience.
- The requirements for appearing on the list of mediators must be made public and available to interested persons.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

**V. Confidentiality: A Mediator shall Maintain Reasonable Expectations of the Parties with Regard to Confidentiality.**

The reasonable expectation of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make.

The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

**COMMENTS:**

- The parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.
- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

**VI. Quality of the Process: A Mediator shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.**

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

**COMMENTS:**

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.
- A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.
- A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

**VII. Advertising and Solicitation: A Mediator shall be Truthful in Advertising and Solicitation for Mediation**

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

**COMMENTS:**

- It is imperative that communication with the public educate and instill confidence in the process.
- In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

**VIII. Fees: A Mediator shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.**

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

**COMMENTS:**

- A mediator who withdraws from a mediation should return any unearned fee to the parties.
- A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

**IX. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.**

**COMMENT:**

- Mediators are regarded as knowledgeable in the process of mediation.
- They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities. Copies of the Model Standards of Conduct for Mediators are available from the Offices of the participating organizations. The addresses are listed below:

American Bar Association  
 Section on Dispute Resolution  
 740-15th Street, N.W.  
 Washington, DC 20005-1009  
 Society of Professionals in Dispute Resolution  
 815-15th Street, N.W.  
 Washington, DC 20005

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 Sharing Neutrals

Standards of Practice

Mediator Agreement



I have read the Sharing Neutrals Mediator Qualifications and Standards of Practice dated January 7, 2000. I agree to uphold the Standards of Practice. In addition, I have read and understand the confidentiality provisions of the Alternative Dispute Resolution Act of 1996.

I pledge to uphold these ethical principles as a Sharing Neutrals mediator.

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(Signature)

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Name (please print)

---

Date

Please forward original to the DOCR EEO/EO Mediation Coordinator.

U.S. Department of Transportation  
Internal Policy, Program Development  
and Support Division, S-32  
400-7th Street, S.W., Room 5414a  
Washington, DC 20590